

# For Norway it's Official: The Rule of Law is No More in Poland

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## The last straw

The so-called “muzzle law”, adopted by the Polish parliament on January 23, was the last straw. On Thursday 27 February, the board of the Norwegian Court Administration (NCA) decided to withdraw from its planned cooperation with Poland under the justice programme of the EEA and Norway Grants, due to concerns over the Polish justice reforms.

The EEA and Norway Grants are basically Norway's membership fee for access to the EU inner market under the [EEA Agreement](#). These funds of 2.8 billion euros per five-year programme period are distributed among 15 EU member states in the form of grants in specific fields, among them the justice field. Poland is the [biggest recipient](#), with 809 million euros allocated to different purposes such as energy, business development, research, and justice. The justice programme of around 70 million euros consists of a Norwegian-Polish cooperation on correctional services, combating domestic violence, and judicial cooperation. The main Norwegian partner is the NCA, which has now decided to pull out, leaving a gaping judicial hole in the EEA and Norway Grants.

## The message: The rule of law is no more in Poland

While the 70-million-euro cooperation programme is hardly significant for the Polish authorities, the collapse of the justice programme is noteworthy due to its justification and its public approval by the Norwegian government.

In a [statement](#) published on the NCA website, the director of the NCA stated that the bilateral cooperation could not continue since “basic European standards for legal security are no longer present” in Poland. The director referred to criticism of the Polish justice reforms by the Venice Commission, the OSCE and the EU Commission, and concluded that the political control of Polish courts is now so extensive that the NCA and the Norwegian courts could no longer continue their cooperation with Poland within the EEA and Norway Grants justice programme. Crucially, the director voiced concern that Norway's cooperation with Poland in the justice field might be considered as an acceptance of the recent justice reforms in Poland.

Indeed, the NCA statement and the justification for ending judicial cooperation with Poland should be considered the official position of the Norwegian government. In a [statement](#) by the government issued the same day, the government called the NCA

decision “a clear signal to the Polish authorities that the Norwegian Government is concerned about developments regarding the rule of law and the independence of the judiciary in Poland”.

Strip away the diplomatic language, and the message is clear: The recent justice reforms has undermined judicial independence and destroyed the rule of law in Poland. From now on, the Norwegian government and judiciary will not be associated with the Polish judiciary through bilateral cooperation.

## **Why is the Norwegian response significant?**

The NCA’s decision to end judicial cooperation with Poland is significant because it means that a European government is now officially distancing itself from the Polish judicial system. For now, Norway will continue its cooperation with Poland in other sectors under Norway and EEA Grants. Yet the government statement left the door open for rule of law developments in Poland to affect the remainder of the 809 million euro grant scheme.

This is not the first time Norway used the EEA and Norway Grants for rule of law purposes. In 2014, Norway [suspended the payments to Hungary](#) after the Hungarian government attempted to block Norway’s allocation of funds to human rights NGOs.

The position taken by the Norwegian government should serve as an example to follow for other states. The lethargic reaction of EU institutions has proved to be wholly inadequate to meet what should be considered an existential threat to the EU: The Polish government’s successful attempts to politically control the judiciary and prosecution service means that Poland is now in persistent breach of the EU treaties. The newly adopted “muzzle law” is one big middle finger aimed at the CJEU and its grand chamber judgement of 19 November last year (Joined Cases [C#585/18](#), [C#624/18](#) and [C#625/18](#)). While the CJEU has handed down some important judgements recently, their short-term impact appears to be limited. The EU legal tool box is lacking in face of a large member state that is simply ignoring CJEU judgements.

Nor is there much hope in the Council of Europe legal tool box. The European Court of Human Rights is too slow to deal with such fast paced developments, and while the Venice Commission [acts rapidly](#) and can assess the systemic effects of legal reforms, its opinions are only advisory. Besides, the Polish government has boycotted the Venice Commission since that body criticised the reform of the Polish Constitutional Tribunal in 2016.

## **The stage is set for unilateral action**

Until the EU’s political institutions wake up from their slumber, the European stage is set for the nation states to take unilateral political action against Poland. In this context, the Norwegian government’s decision is a small but symbolic step.

Not being an EU-member may give Norway more political room for manoeuvre compared to the EU member states. Yet it is high time for EU member states, their governments, parliaments, and courts, to publicly acknowledge that “basic European standards for legal security are no longer present” in Poland, to quote again the Norwegian Court Administration. Today the rule of law may be losing in Poland. Tomorrow it may be democracy. Keep in mind that the new and [much-criticised Extraordinary Control and Public Affairs Chamber](#) of the Polish Supreme Court, its judges appointed by the politicised National Council of the Judiciary and its lay judges appointed by the Parliament, decides on the validity of Polish elections. There is no such thing as democracy without the rule of law.

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